

Defense Exhibit 7

In the Matter Of:
SOCIAL MEDIA CASES
JCCP5255

MOTION

May 03, 2023



SOCIAL MEDIA CASES
JCCP5255, 05/03/2023

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MOTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 12

HON. CAROLYN B. KUHL, JUDGE

SOCIAL MEDIA CASES,

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) CASE NO. JCCP5255

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, MAY 3, 2023

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1 (WEDNESDAY, MAY 3, 2023)

2 M A S T E R I N D E X

3

4 CHRONOLOGICAL/ALPHABETICAL ORDER OF WITNESSES

5 (NONE)

6

7 INDEX OF EXHIBITS

8 (NONE OFFERED)

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1 CASE NUMBER: JCCP5255
 2 CASE NAME: SOCIAL MEDIA CASES
 3 LOS ANGELES, CALIFORNIA, WEDNESDAY, MAY 3, 2023
 4 DEPARTMENT SSC 12 HON. CAROLYN B. KUHL
 5 REPORTER: CHRISTINE KWON-CHANG
 CSR NO. 12143
 6 TIME: A.M. SESSION
 7 APPEARANCES: (AS HERETOFORE NOTED.)
 8

9 (The following proceedings
 10 were held in open court:)

11
 12 THE COURT: Good morning everyone here on the
 13 social media cases, and we'll take appearances in the
 14 courtroom starting over here, please.

15 MS. EMMEL: Jennifer Emmel with Beasley, Allen.

16 MS. CLEOFE: Good morning, your Honor.

17 Cherrisse Cleofe from Kiesel Law.

18 MS. JEFFCOTT: Emily Jeffcott of Morgan & Morgan.

19 MR. CREED: Jesse Creed of Panish, Shea, Boyle,
 20 Ravipudi.

21 MR. RAVIPUDI: Rahul Ravipudi for plaintiffs.

22 MR. KIESEL: Paul Kiesel, Your Honor, for
 23 plaintiffs.

24 MR. BERGMAN: Good morning, Your Honor.

25 Matthew Bergman, Social Media Victims Law
 26 Center.

27 THE COURT: Very good. On the defense side in
 28 the courtroom, please.

1 MS. DEGTYAREVA: Good morning, your Honor.

2 Victoria Degtyareva from Munger, Tolles &
3 Olson on behalf of Defendant Snap.

4 MS. PIERSON: Good morning, your Honor.

5 I'm Andrea Pierson from Faegre Drinker for
6 TikTok and Byte Dance.

7 MR. CHIOU: Good morning, Your Honor.

8 Christopher Chiou with Wilson Sonsini for
9 Google, Alphabet, and YouTube.

10 MR. DONOHUE: Good morning, your Honor.

11 Matthew Donahue from Wilson Sonsini for
12 Google, Alphabet, and YouTube.

13 MR. BLASCHKE: Good morning, Your Honor.

14 Matt Blaschke with King & Spalding for
15 TikTok and Byte Dance.

16 MS. SIMONSEN: Good morning, Your Honor.

17 Ashley Simonsen from Covington & Burling
18 for the Meta defendants.

19 MR. SCHMIDT: Good morning, Your Honor.

20 Paul Schmidt, Covington, for the Meta
21 defendants as well.

22 MS. LADDON: Good morning, Your Honor.

23 Tarifa Laddon with Faegre Drinker for
24 TikTok and Byte Dance.

25 MR. BLAVIN: Good morning, Your Honor.

26 Jonathan Blavin from Munger, Tolles &
27 Olson for Snap.

28 THE COURT: Very good. You can all be seated.

1 Those of you on LACourtConnect, the clerk
2 has taken your appearances, and I think those of you in
3 the courtroom heard those appearances at that time, so
4 we won't repeat them.

5 Feel free to jump in if you need to,
6 though, those of you online.

7 And I'm signing the court reporter's
8 order.

9 Okay. Thank you very much for your joint
10 report, and there was a request for priority on a couple
11 of issues, so we'll start with those.

12 So we'll start with a discussion of the
13 parties' proposed coordination order to coordinate
14 discovery between the MDL and the JCCP.

15 I'm going to tell you, having read your
16 thorough discussion of your respective positions, I'm
17 going to tell you my proposal for addressing the issue,
18 and then you can talk to me about what I've expressed.

19 So you'll recall this was not an order I
20 asked for. I've asked for several things, but this is
21 not one I asked for particularly.

22 If the defendants want to ask the MDL
23 court to enter an order about how discovery should be
24 coordinated between the MDL and JCCP courts, that's
25 fine.

26 I have not spoken with Judge Gonzalez
27 Rogers about this. I know she has been traveling.

28 My own experience has been that -- and

1 this goes back to the year 2000 when we started the
2 complex courts.

3 My experience at creating elaborate orders
4 to govern in advance future proceedings and how the
5 future proceedings will be conducted has some downsides.
6 I've found that -- and I think most of us in complex
7 have found that it's better to solve issues as they
8 arise and better decisions can be made in concrete
9 situations.

10 I feel confident there will be good
11 communication between the lawyers in this case and the
12 lawyers in the MDL. I feel confident there will be good
13 communication between myself and Judge Gonzalez Rogers.

14 So what I propose to do is the following.
15 I'd propose that the minute order for today set forth
16 several general principles that I think everybody agrees
17 on, and for the present that would be sufficient for
18 this case.

19 At this time, depending on what the
20 federal court does, something else may be required, but
21 I would propose to set forth in today's minute order the
22 following principles: One, discovery in the MDL and the
23 JCCP should be coordinated; two, discovery requests
24 served and responded to in the MDL will be treated as
25 though served and responded to in the JCCP; and, third,
26 this Court will allow discovery in -- will not allow
27 discovery in this case that duplicates what has taken
28 place in the MDL.

1 So then if the defendants want this Court
2 to enter additional orders on this topic, defendant
3 should provide plaintiffs with a list of such proposed
4 orders or topics, proposed order, and meet and confer.
5 Absent an agreement, you'll let me know in a joint
6 posting or in a future status conference report.

7 I'll have an informal discovery conference
8 on the issues, and then absent informal resolution,
9 defendants could file a motion with this Court.

10 So I'll hear from counsel on either side
11 on this proposed action by this Court at this time.

12 MR. BLASCHKE: Your Honor, Matt Blaschke for
13 TikTok. I'll speak on this behalf of defendants.

14 I appreciate the Court's comments this
15 morning. Indeed, the principles that Your Honor just
16 outlined are embedded in the draft coordination order
17 that we have been discussing with the plaintiffs for
18 sometime now.

19 And as Your Honor noted, there is a
20 process already in place whereby the proposed order will
21 be submitted to Judge Gonzalez Rogers, and she'll do one
22 of three things with that order.

23 She'll either enter it as proposed, she'll
24 modify it and enter it, or she won't enter it at all.
25 And I do think that that will dictate what we do next in
26 connection with the JCCP.

27 Your point certainly about not having an
28 elaborate order that is forward-looking and just not

1 necessary, those comments are well-taken, and our
2 approach here certainly is not to have a needlessly
3 elaborate order but rather to streamline the proceedings
4 and take some commonsense type steps that might help us
5 do that.

6 So with your comments in mind, Judge,
7 we'll proceed, and we'll report back once we've engaged
8 with the MDL.

9 THE COURT: Okay. Plaintiffs' counsel?

10 MR. CREED: Your Honor, Jesse Creed for the
11 plaintiffs.

12 We agree with the Court's approach, and
13 these all sound -- these three items sound fine to us.
14 We have no objection to that.

15 I think on the second item, there might be
16 an issue where I think -- as counsel for defendant said,
17 we -- there are things -- there were agreement on
18 things, and then there was sort of a list that we said
19 we wouldn't agree to absent a noticed motion, and we
20 outlined the concepts of what those things consist of in
21 the joint report.

22 But I think what was also agreed to was
23 that any discovery served and responses in the JCCP
24 would also be applicable in the MDL. That's been agreed
25 to by the parties as well.

26 THE COURT: Okay. That's fine, but I'm governing
27 my turf here, so I wouldn't think it would be
28 appropriate for me to say what is done here -- the

1 binding effect of what is done here should have on the
2 MDL, so it's probably why I wouldn't do it in the
3 converse, so to speak. Okay?

4 MR. CREED: Yes.

5 THE COURT: Very good.

6 Okay. So the minute order will reflect
7 those -- those three principles.

8 So let's turn to the protective order.

9 Was the order signed by the magistrate judge attached to
10 the joint report?

11 I don't think I saw it.

12 MS. SIMONSEN: Your Honor, the magistrate judge
13 has not entered the protective order yet, but he did
14 hold a hearing on the parties' proposed initial draft
15 and the disputed issues, and the parties are currently
16 adjusting the order to reflect his comments at the
17 hearing and anticipates submitting a revised proposed
18 protective order in the near future.

19 THE COURT: So it's not final.

20 So let me just address the two issues that
21 are raised by plaintiffs' counsel, one regarding expert
22 disclosures.

23 So the Northern District of California has
24 the extensive experience, probably more than anyplace in
25 the country, with especially patent cases that have
26 trade secret and technical information of that sort, and
27 I certainly respect their understanding of the risks and
28 protections for highly confidential trade secrets and

1 technical information.

2 My view, without conducting a separate
3 research for this case, is that I don't think California
4 allows law -- allows the identity of a nondesignated
5 expert to be required to be disclosed to a party
6 opponent.

7 So depending on what is done in the
8 federal court, this issue will need to be briefed here.
9 So we can do that now or we can wait, but that, I think,
10 could be -- well, so that will need to be briefed.

11 So my question for counsel is -- and I'll
12 move on to the other issue in a minute, but my question
13 for counsel is how do you want to handle this?

14 MR. CREED: Your Honor, this is Jesse Creed for
15 the plaintiffs.

16 We agree it would need to be briefed, and
17 we can do that -- I think if defendants want to draft
18 the issue, obviously, then we would agree to what is
19 happening in the MDL vis-a-vis the protective order.

20 If the defendants want to insist on any
21 provision that would require early disclosure, then I
22 don't see any need to wait on briefing it.

23 MS. SIMONSEN: Your Honor, we would propose that
24 once the MDL court enters the protective order in those
25 proceedings, we meet and confer with plaintiffs on any
26 revisions that may be required for purposes of these
27 proceedings, as we've contemplated would be the course
28 of action all along, and then we present to Your Honor a

1 proposed protective order or competing proposed
2 protective orders along with letter briefing on any
3 disputes, and that way we can address all of the issues
4 at once in the context of an actual proposed order that
5 would be before -- before Your Honor.

6 THE COURT: Okay. Let's see what the magistrate
7 judge does, and then we'll move forward from there.

8 And what I'd propose in terms of something
9 like this, the way I'd like you to do it is either bring
10 it up in the next status conference and we can talk
11 about specific briefing or use the message board and
12 say, you know, "The magistrate judge has entered the
13 order, and it does require disclosure experts" -- "names
14 of experts, and here's what we'd propose for briefing
15 the issue," or just say, "We'd like an informal
16 conference with the Court to discuss how the issue
17 should be briefed." Okay?

18 And for purposes of this Court, we don't
19 do -- we don't do letter briefs. We need something that
20 can be filed, and so it would have to be either, you
21 know, an agreed length joint statement where each side
22 has its portion of the joint statement or simultaneous
23 briefing by each side on an agreed length. There's a
24 lot of ways to do it, but it needs to be filed.

25 MS. SIMONSEN: Understood, Your Honor.

26 And I will just for your awareness let you
27 know that we have had, I think, success doing similar
28 joint statements when we've submitted proposed orders in

1 the MDL. I think we can certainly do something similar
2 here in a form that would be acceptable to Your Honor,
3 and that can be filed.

4 MR. CREED: Your Honor, a note on that.

5 Based on my experience in California
6 practice, obviously, the appellate courts in particular,
7 as the Court has had experience with, there's -- when
8 you're dealing with work product, I think it should
9 proceed by a noticed motion.

10 So if the defendants want to impose an
11 order that would require piercing the plaintiffs' work
12 product, then it should be by a noticed motion.

13 So we will, of course, talk to defendants
14 if there's an alternative issue, but having dealt with a
15 stay from the Supreme Court of California with this
16 Court on various privilege issues, I think that's how we
17 would prefer to proceed to create the record.

18 THE COURT: Okay. And I'm -- I am open to that.

19 I've also had the unfortunate situation
20 where it seems like everybody's agreed to simultaneous
21 briefs and an informal process, and then people say,
22 "You can't order me, you know, at the last minute."

23 So there's something to what Mr. Creed
24 says, but under those circumstances, what we ought to do
25 is sort of agree to shorten time or something so that we
26 don't have to -- so, you know, notice for a regular
27 motion here is 16 court days, which is basically a
28 month, so we could do something quicker if you stipulate

1 to that.

2 MS. SIMONSEN: Your Honor, we're happy to discuss
3 that with plaintiffs.

4 I think, as Your Honor proposed, an
5 informal discovery conference first where we can at
6 least preview for Your Honor any of the outstanding
7 issues --

8 THE COURT: On this issue, you can say, "We have
9 had the informal conference." Okay?

10 So -- yeah, it will have to be briefed.
11 So that's what I need to determine in an informal
12 conference, is, you know, if I can give a tentative
13 that's going to satisfy both sides, if I can give a
14 tentative of, you know, what my understanding of the law
15 is without briefing as truly a tentative, and then
16 briefing can go forward.

17 So on this issue, we've talked about it,
18 so we're going to have to brief it if that's what's in
19 the federal -- in the federal order and you wanted to
20 apply it in a similar way here.

21 MS. SIMONSEN: Understood, Your Honor.

22 THE COURT: On the 30 days to designate which
23 parts of the deposition are confidential, and as I
24 understand it, the entire deposition would be treated as
25 confidential for 30 days, and then there would be a
26 deadline to designate the parts that are confidential
27 under the protective order.

28 I would say this. I think it's really not

1 very burdensome under California Rule of Court 2.550,
2 which I have something additional to say about in a
3 moment, to redact deposition testimony in a brief and
4 file the brief conditionally under seal, which is what's
5 required.

6 The party -- the burdensomeness really is
7 on the party whose information is filed by an opposing
8 party and is arguably confidential, and then that party
9 has a greater burden because they have to move to seal
10 within ten days.

11 And that party, if they want to avoid that
12 burden of having to move to seal within ten days, can go
13 through the deposition more quickly and designate the
14 confidential -- the only parts that should be
15 confidential before somebody needs to file a motion.

16 And everybody's going to know when motions
17 are being filed here, so that would -- I would at this
18 point just leave the 30 days. This is also one of those
19 really forward-looking issues that by the time it
20 arises, the parties will have experienced working with
21 each other, and you may be able to deal with that
22 informally to avoid burden on both sides when the issue
23 arises later.

24 So I would just leave the 30 days in there
25 at this point.

26 MR. CREED: Okay.

27 MS. SIMONSEN: Thank you, Your Honor.

28 MR. CREED: Thank you, Your Honor.

1 THE COURT: Okay. While we're talking about
2 California Rule of Court 2.550, first of all, no one
3 enjoys the burden of obtaining permission to seal a
4 court record, and this Court does not enjoy ruling on
5 motions about same.

6 However, you know, we are an institution
7 that lives by its own credibility, and we have
8 California Supreme Court precedence that is real wisdom
9 about having an open court system and the importance of
10 that, and California Rules of Court 2.550, burdensome as
11 it is, reflects the California Supreme Court's decision
12 in the CBS case setting forth the importance of having
13 an open court.

14 And when you study 2.550, which I
15 recommend to everyone if you haven't done it, you'll see
16 that there are some places it applies and some places it
17 doesn't apply, so anything that has to do with solving
18 discovery disputes, it does not apply -- or that is, it
19 has an exception for the standards that apply otherwise.

20 You know, so I can't change 2.550, and,
21 you know, a lot of us have thought about whether
22 there's, you know, a more expedited way that we could
23 propose to get through this, but, you know, the Judicial
24 Council hasn't come up with anything as yet. So I think
25 we would just go with no separate sealing order. Follow
26 the Rules of Court.

27 I looked at Exhibit 7 to the joint report.
28 I don't think it would be sufficient in state court.

1 Critically, it doesn't set forth the standards that
2 would have to be met by a party seeking to seal, which
3 is set forth in 2.550, and it's not consistent with
4 state procedures for how documents are filed
5 conditionally under seal.

6 By the way, this process is also a --
7 2.550 is a huge burden on staff as well, so setting up
8 some new slightly different system would probably not be
9 helpful since they've mastered that system.

10 So that's my view about sealing. We'll
11 just -- 2.550, just follow it.

12 MS. SIMONSEN: And, Your Honor, Ashley Simonsen
13 for the defendants.

14 To be clear, we were proposing not that
15 Your Honor enter that specific sealing stipulation, but
16 rather that we would make adjustments to it to account
17 for 2.550.

18 Certainly, we have no intention of
19 addressing the substantive standards for sealing in
20 terms of who bears the burden of establishing a basis
21 for sealing.

22 Really, the purpose is to try to make it a
23 little bit easier on everyone in the sense that the
24 sealing motions would be filed at the conclusion of
25 briefing on any underlying motion for which there are
26 multiple sealing motions, but we would not anticipate
27 there would be any lesser access to information.

28 For instance -- and I think there's --

1 reasonably there would be greater access because ten
2 days following the submission of a paper for which
3 certain material may be subject to sealing, the
4 designating party goes through and redacts it in as
5 limited nature as possible and then submits it to the
6 other side to go ahead and put in redacted form on the
7 record.

8 In ordinary practices, as Your Honor just
9 observed, it may be the case that the party filing the
10 paper that needs to be sealed may sort of overredact
11 since the information is not their own to defend the
12 sealing of, but if Your Honor doesn't want us to take a
13 shot at sort of amending that stipulation to comply with
14 California rules, certainly we hear you and we'll simply
15 follow the code.

16 THE COURT: I would suggest following the code, I
17 really would.

18 It's -- and, yes, a party filing a paper
19 will overredact, but that's because under your
20 confidentiality orders, usually the producing party at
21 the first stage will overdesignate as confidential, and
22 we understand why that happens, but then it has to be
23 unwound at that point, i.e., ten days after, let's say,
24 the plaintiffs file a motion.

25 So the -- so I think we ought to -- if you
26 want to bring it back again, I'll listen, but I think
27 that's what we ought to do.

28 By the way, I usually hear those motions

1 at the same time I hear the substantive motion, so we
2 don't have a separate -- separate appearance, but I
3 realize it's a lot of work that has to be done
4 immediately following.

5 But, you know, the Rules of Courts say
6 that the clerk is supposed to unseal the thing by court
7 rule if the motion isn't filed.

8 Now, I'll tell you we allow do-overs,
9 right, if people don't quite make that deadline, but
10 that's -- that's the rule.

11 MS. SIMONSEN: I understand.

12 THE COURT: What I would suggest is if you come
13 up with something good, submit it to the Civil Rules
14 Committee of the Judicial Council as a proposal because
15 all of us would like our life made easier in some way.

16 Okay. All right. So just noting that you
17 referenced the deadline for the master complaint, and
18 that's moving forward. That's excellent.

19 User interface day, so when I was thinking
20 about a science day, so to speak, regarding user
21 experiences with various products, I had not thought
22 about that there would be a temporal problem; that is,
23 what user experience is over different periods of time
24 alleged in the complaints or today, for that matter, and
25 I think it's too complicated before the demurrers are
26 adjudicated, especially because we have to be so careful
27 not to run afoul of the rule that facts outside the
28 allegations of the complaint can't be considered on

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JCCP5255, 05/03/2023

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1 | demurrer.

2 So I think we should let this issue go for
3 now, and I'm sorry that people have spent a lot of time
4 on it. It's something I threw out without thinking
5 through very well. Perhaps it will be helpful at some
6 point later.

7 Okay. The demurrer is scheduled, so I
8 have looked over the competing schedules and the reasons
9 for them, and thank you for your efforts to agree, and
10 even though you didn't agree, the discussions were
11 helpful for me in thinking about a schedule.

12 So here's the schedule that I would put
13 out there as a tentative subject to further argument if
14 you want to and weighing the competing considerations.

15 So on or before -- and I put this in the
16 minute order.

17 On or before June 2, plaintiffs to
18 identify three short form complaints that together with
19 the master complaint would be the subject of the
20 demurrers, and then July 14 or four weeks after the
21 Supreme Court decision in Gonzalez versus Google,
22 whichever is later, defendants will file joint and
23 individual demurrers.

24 I have no inside information, but knowing
25 what the Supreme Court has on its calendar still, my
26 guess would be it would be very close to June 30 anyway
27 that they're going to decide this, so really it would be
28 running four weeks from the Supreme Court decision, but

1 July 14 if they do get it done sooner.

2 And then four weeks after the demurrers
3 are filed, plaintiffs are to file their opposition, and
4 three weeks after the opposition is filed, defendants
5 are to file a unitary reply brief.

6 I would ask for a unitary reply brief. If
7 at the time I've looked at the opposition from the
8 plaintiffs and you feel you should have separate ones,
9 you can let me know, but knowing how these things tend
10 to work, I think you'll want a unitary reply brief, and
11 that would be most helpful to me.

12 MR. SCHMIDT: And that's what we're trying to do
13 both with the opening brief, Your Honor, Paul Schmidt
14 for Meta, and with the reply brief is to have unitary
15 briefs.

16 That obviously takes a lot of
17 coordination, so we appreciate that time, but that is
18 what we're aiming for. There's a possibility that there
19 might be companion individual defendant briefs, but
20 we're going to put as much as we can in unified briefs.

21 In the MDL, we did one unified brief, and
22 then one defendant had a supplementary brief, and I
23 would expect -- I would hope that we would get something
24 very similar here.

25 THE COURT: That would meet my expectations.
26 That sounds good.

27 So -- now, I say four weeks rather than 30
28 or 31 days, and the reason is because the Supreme

1 Court -- I'm assuming it's going to run from the Supreme
2 Court decision.

3 The Supreme Court will issue its decision
4 on a weekday, and that way when we count weeks, we're
5 counting weekdays, and we don't have a problem of what
6 if the 30th or 31st day falls on a weekend.

7 Everyone knows when we're filing. Okay?

8 However, obviously, we don't know when the
9 Supreme Court is going to decide, and therefore I'm not
10 setting a hearing date today.

11 So here's what I'd like you to do, and
12 I'll put this in the minute order. I'd like you to file
13 a stipulation and proposed order re requested hearing
14 date after Gonzales versus Google is decided and set
15 forth the actual dates each brief will be filed, and
16 also in that pleading, I'd like you to propose or
17 repropose page lengths.

18 And at that point, the parties will have
19 been able to see at least some of the briefing in
20 federal court and perhaps have a better sense of what's
21 needed for the demurrers here.

22 Based on -- I'll tell you that based on my
23 current anticipation of what might have to be covered, I
24 would not anticipate approving a hundred pages, so --
25 but you can ask again.

26 So if you don't agree on the page length,
27 I'll consider your positions at that time and make my
28 own judgment.

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1 So that would be a stipulation and
2 proposed order setting forth the schedule for the
3 briefing, asking for the page lengths that you want, if
4 you agree.

5 If you disagree, I would suggest you just
6 set forth your -- your respective positions in that
7 stipulation even though it's not stipulated to. Okay?

8 MR. SCHMIDT: Your Honor, may I speak briefly on
9 the page?

10 THE COURT: Yes.

11 MS. SIMONSEN: That is an issue that I think
12 we'll probably not have agreement on given where the
13 parties are right now, and I'm mindful about what Your
14 Honor said about a hundred pages.

15 That's what we used in the MDL with, from
16 our perspective, much narrower claims that -- we were
17 moving on 5 claims. Here, we're moving on 14 claims.

Given the complexity of the claims here, given the Section 230 and First Amendment issues we haven't even briefed yet in the MDL within those hundred pages, it is really, really challenging.

If we were not coordinating on the defense

1 and we each filed our individual briefs, that would
2 actually play out to many more pages than a hundred
3 pages across the defense group.

4 It would help to have probably earlier
5 guidance on that because -- for example, what the
6 plaintiffs proposed from our perspective is just not a
7 serious proposal. We can't address facts regarding each
8 individual defendant, let alone 14 different claims, in
9 a 300-page complaint in 30 pages.

10 Having some earlier guidance on that might
11 help us draft because we are starting to draft now with
12 the hope that we will get a hundred pages, with the
13 thought that as remarkable as a hundred pages sounds,
14 it's certainly a big brief, that's from our perspective
15 going to be hard to reach in terms of the different
16 arguments we have to present given the complaint that
17 we've received.

18 THE COURT: Well, draft with the idea in mind
19 that you're not going to get a hundred pages, but you're
20 going to get more than 30 pages.

21 Thirty pages is too little for this, but I
22 don't think I've ever had a hundred-page brief, so there
23 you are.

24 MR. SCHMIDT: May I bring one other issue on
25 that, Your Honor?

26 One thing we hadn't anticipated when we
27 proposed the hundred pages is the choice of law issues
28 and having to brief choice of law issues.

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1 Your Honor no doubt will recall that when
2 we were here last time, I raised the issue whether
3 plaintiffs would be moving -- would be identifying
4 plaintiffs from different states and that that might
5 implicate choice of law issues.

6 Plaintiffs didn't say they even had
7 plaintiffs from other states. We've now been told as of
8 Monday that two or one of the three plaintiffs they plan
9 to pick are from other states, and that creates a
10 serious concern as to whether that really advances the
11 litigation.

12 We have only one other state that has
13 double digit plaintiffs. Most states have one or two
14 plaintiffs, and if we get an Oregon or Georgia or
15 New York plaintiff where there's only one plaintiff in
16 that state, it doesn't do much to advance the
17 litigation.

18 But it also adds a wrinkle in terms of
19 potentially having to brief choice of law which can be a
20 complicated issue-by-issue question that we need to
21 brief if we're trying to live within 100 pages for three
22 plaintiffs with 14 claims.

23 THE COURT: You're going to have that in the
24 federal court case anyway, aren't you, choice of law?

25 MR. SCHMIDT: In the federal court case, because
26 we were essentially moving on all states, we didn't have
27 to do the same level of plaintiff-by-plaintiff analysis
28 as to what the controlling law is and certainly not the

1 same level of claim-by-claim analysis.

2 Just as an example, in the draft master
3 complaint, we have -- the plaintiffs pled a California
4 sex discrimination claim. Presumably, they're going to
5 shift that for non-California plaintiffs, but that would
6 be a choice of law issue that we just didn't have to
7 grapple with in the MDL.

8 And there's similar kinds of statutory
9 claims that are different across the states where there
10 are actually significant differences within the states
11 that we didn't have to address in the MDL that we will
12 here.

13 MS. JEFFCOTT: Your Honor, we haven't decided
14 which plaintiffs would be subject to demurrer, but I
15 think at this time, we -- we anticipate that more likely
16 that all plaintiffs will be from California, so this
17 issue may be mooted in its entirety.

18 We obviously don't want to commit to that
19 at this point in time just because we still have a month
20 to review additional claims, but we're willing to work
21 with the defense to the extent that we do select a
22 non-California plaintiff for a demurrer.

23 THE COURT: Okay. That might fall out or it
24 might not, but that's something that you'll know by the
25 time you're asking me for page lengths. Okay?

26 MR. CREED: Your Honor, just one clarification on
27 the stipulation and proposed order. Maybe this is clear
28 to others, but I want to make sure I understand.

1 That would be -- so that would be a
2 stipulation we would file after the Supreme Court's
3 opinion in Gonzalez?

4 THE COURT: Correct.

5 So once that opinion is filed, we will
6 know precise dates for the filing of each. So the stip
7 and proposed order would have two purposes.

8 Purpose number one would be to ask for a
9 hearing date essentially based on what you now know are
10 the specific calendar dates, and the second purpose
11 would be to address the page length issue.

12 All right. Very good.

13 You had a section in the joint report
14 called "Predicates to Discovery," and discovery's stayed
15 now as you know, so I don't think I need to do anything
16 else except now we're going to talk about plaintiff fact
17 sheets.

18 And I think, first of all, I want to thank
19 the parties for working on this. It does take a lot of
20 time. A lot I think can be done between the parties
21 between now and when the demurrers are argued.

22 I don't know if the plaintiffs are using a
23 data aggregator. It certainly takes time to work with
24 that -- with such an entity and to, you know, figure out
25 the electronic system for the plaintiffs to be entering
26 their responses electronically.

27 MR. CREED: We do anticipate using a data
28 aggregator. Which one we use has not been determined.

1 We haven't selected one. We've been talking to Two-1,
2 so that's the latest update on that, Your Honor.

3 THE COURT: I would really encourage you to --
4 and, again, sometimes both sides will agree. I don't
5 know if you will or not, but start early.

6 I've got -- I have another case which is a
7 mass tort. It's not a JCCP, but it involves thousands
8 of plaintiffs, and plaintiffs' counsel is telling me
9 it's taking them months and months and months to work
10 with the data aggregator to get the electronic system
11 correct so that the responses are going to be recorded
12 correctly, so I would get going on that.

13 I know plaintiffs are anxious to move
14 discovery forward. I would really recommend that you
15 focus on that.

16 I know that the data aggregator will then
17 say -- will need time with the specific questions: How
18 many subparts? Do you jump to the third question?

19 I get all of that, but the process should
20 be started in my opinion.

21 MS. JEFFCOTT: And, Your Honor, Emily Jeffcott
22 for plaintiffs.

23 And, Your Honor, we have solicited a quote
24 from one entity that can do this, and we'll work with
25 defendants to see if we can come to an agreeable
26 solution on that end.

27 Some of us on this end have had great
28 success with certain companies in being able to move

1 through from plaintiff fact sheet all the way through to
2 the end of the case.

3 THE COURT: Yes, and I don't need -- you all are
4 sophisticated. I don't need to tell you that the
5 plaintiff fact sheet has many uses, including post
6 settlement, if there's -- if there ever is a settlement
7 and it's an inventory or global settlement, you need to
8 think through those fact sheets with the far end of the
9 case in mind, and I know you know that.

10 MR. CREED: Your Honor, on that note, I think --
11 I think that in order to even discuss having an informed
12 discuss with a data aggregator, we would need to have a
13 fixed fact sheet so they understand what questions are
14 being asked --

15 THE COURT: I don't think so. I think you need
16 to start with them and get them in place.

17 So the other thing that I would counsel
18 is, and this applies as much to the defendant as to the
19 plaintiffs and perhaps more, don't ask too much.

20 If you have too many subparts, it's going
21 to be difficult for you -- for defendants to ask me to
22 enforce that adequately, so, you know, think about
23 something that, first of all, is difficult for a
24 layperson to understand and has holes in it, and then
25 you come and ask me to dismiss that plaintiff because
26 they have those holes, and, you know, they've been asked
27 to re-respond and they haven't re-responded, are you
28 going to bring me a half filled out thing that has

1 detail that's missing and ask me to dismiss the claim?

2 That's a hard sell. Okay? So really
3 limit it to what you need to evaluate the case.

4 Obviously, before any case would go to
5 trial, you're going to have depositions and IMEs and all
6 kinds of things, so don't -- don't overask in the
7 plaintiff fact sheet.

8 The other thing that I really recommend is
9 to try them out on laypeople. We're lawyers, and we
10 have that problem of asking things using our language,
11 and from defense -- from plaintiffs' standpoint, you
12 don't want to have to hang over your clients and answer
13 all those questions about what does this mean.

14 From defendant's standpoint, you don't
15 want to confront someone in deposition and they say, "I
16 have no idea what this meant," and then the answers that
17 you got are not useful.

18 So try them out on laypeople and simplify
19 and simplify. Okay?

20 MS. SIMONSEN: It's helpful guidance, Your Honor.
21 Thank you.

22 THE COURT: And I have had -- we've had a lot
23 of -- a lot of experience with plaintiff fact sheets,
24 and I always review them too because even if counsel
25 agree, there are things there that maybe I can see that
26 counsel haven't thought of. So those are my
27 suggestions.

28 I would propose to do this and to ask that

1 by August 1 the parties submit competing proposed fact
2 sheets for the Court's review and comment.

3 Now, hopefully you'll have met and
4 conferred and, you know, eliminated as many issues as
5 you can, but at that point, I would be able to give you
6 kind of a check-in and my thoughts about it to send you
7 back to the negotiating table if you haven't -- if you
8 haven't agreed.

9 Does that sound reasonable?

10 MR. CREED: It does, Your Honor.

11 Could we also include in that discussion
12 document -- plaintiffs' specific document request that
13 we would make?

14 THE COURT: Yeah.

15 Ordinarily -- well, to me the plaintiff
16 fact sheet includes document requests that are -- it
17 would be in the fact sheet; right?

18 MR. CREED: No.

19 These are the -- there is document
20 requests in the fact sheet that the defendants had
21 proposed, and we have provided an edit yesterday to it.

22 These are the document requests that we --
23 plaintiffs would propound on defendants for plaintiffs'
24 specific documents that would inform the plaintiffs when
25 they're -- when they're completing the fact sheet.

26 THE COURT: Yeah, I haven't seen that picked up
27 in this -- in the joint report, but I continue to think
28 it's a good idea.

1 MS. SIMONSEN: And, Your Honor, if I may, I know
2 at the initial status conference you had suggested, in
3 connection with negotiating a plaintiff fact sheet, that
4 plaintiffs might suggest a very limited universe of data
5 that they might request from the defendants.

6 Purely for the purposes of ensuring they
7 have access to data that they wouldn't otherwise have
8 access to that maybe is needed to complete the fact
9 sheet, we received from plaintiff last Friday a
10 voluminous list of document requests, all documents
11 relating to everything under the sun relating to these
12 plaintiffs, third parties.

13 I do not, respectfully, believe it was
14 within the spirit of what Your Honor had contemplated at
15 the first status conference. I also would note that
16 Your Honor did observe that any motion to compel
17 relating to those initial data requests should happen
18 after the demurrers are resolved, which we do think it's
19 consistent with the fact that discovery is stayed.

20 We think we can negotiate the plaintiff
21 fact sheet, and as we get guidance from Your Honor on
22 the plaintiff fact sheet and how that's coming along, I
23 think that will in turn inform potentially the user data
24 request plaintiffs are making. So I would propose we
25 not make that part of the plaintiff fact sheet
26 discussion, but rather take it up after we're further
27 along on the plaintiff fact sheet.

28 THE COURT: I'm glad you're continuing to discuss

1 the potential for information to be provided prior to --
2 prior to the plaintiff fact sheet.

3 I think they go hand in hand, so I would
4 ask you, again, on August 1 to let me know where you are
5 on those as well.

6 And, you know, if this -- I'll just say
7 it. Plaintiffs, if this production of documents is
8 going to serve the purpose we want it to serve, it has
9 to be narrow and pointed at what the plaintiff would
10 reasonably want to see to refresh recollection to answer
11 the plaintiff fact sheets. That's what I'm
12 contemplating.

13 MR. CREED: Your Honor, we received an 88-page
14 fact sheet that requested voluminous --

15 THE COURT: I understand.

16 MR. CREED: Every one of their requests can be
17 tied to a particular question.

18 We served back, I think, a 20-page fact
19 sheet. I may be off by a couple pages. We have an
20 edited list of our document requests that would
21 correspond with our fact sheet that would be
22 significantly smaller.

23 THE COURT: And I think it's smart for plaintiffs
24 to present their own proposed fact sheet too. I think
25 in some ways, plaintiffs' counsel are -- have a better
26 perspective on what the fact sheet ought to look like.

27 So you'll go back and forth, and August 1
28 I'll take a look at it and see where you're at. Okay?

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1 So on August 1, we'll put in the minute
2 order today the parties are to submit competing proposed
3 fact sheets to the Court for review and document -- and
4 comment -- for the Court's review and comment, and
5 plaintiff -- and -- and proposed early production by
6 defendant of limited documents relevant to plaintiffs'
7 ability to respond to the fact sheets.

8 | Okay. So you'll submit that.

12 That means that on August 4, I'll open up
13 the electronic file and look for this filing that you
14 all have done, so I'm envisioning that this would be
15 sort of a cover sheet that would say, you know,
16 plaintiff and defendants' proposed fact sheet, et
17 cetera, and that it would attach as exhibits your --
18 now, if you can get to the point where you have a red
19 line, that would be even better.

22 And then what I'll do on August 4,
23 nonappearances, take a look at that, and maybe we've got
24 a status conference coming up in ten days, and we'll
25 talk about it at the status conference, and I'll let you
26 know or maybe I'll set a separate conference to talk
27 about the fact sheets. Okay?

28 MS. SIMONSEN: That's helpful, Your Honor.

1 With respect to the user data requests,
2 would it be helpful -- I know there are certain
3 categories of data that plaintiffs are requesting, and
4 we as defendants know that they have access to that
5 information through their own social media accounts.

6 In order to explain to Your Honor why our
7 proposed initial user data requests, if we do think any
8 are appropriate, are limited in the way that they are,
9 would it be helpful for us to submit any kind of short
10 briefing or explanation on that issue for Your Honor?

11 THE COURT: I think what would be most helpful is
12 to just have, you know, the documents.

13 In the cover sheet, you can each use a
14 page maybe to set forth where you're at and why, so to
15 speak, but I should be able to discern the issues.

16 And -- anyway, and if you have that
17 information about the individual accounts, why don't you
18 give it to them now?

19 Okay. But after the demurrer. Right. I
20 understand. We've got a demurrer coming up.

21 MS. SIMONSEN: My point only, Your Honor, is that
22 they actually have access to the information, and we
23 have our first meet-and-confer on this issue scheduled I
24 believe for tomorrow, and so we'll be walking them
25 through that so that they understand what they already
26 have access to, right, in order to complete these
27 plaintiff fact sheets.

28 THE COURT: Okay.

1 MR. CREED: We disagree, but I'm not going to say
2 anything further.

3 THE COURT: That's fine. That's fine.

4 Well, you know, we all know that in
5 discovery the fact that one side has it doesn't mean the
6 other side doesn't have to give it, ultimately, but --
7 okay.

8 This bring us to the plaintiff
9 preservation form, and I think as I may have said
10 earlier, but if I haven't, I'll say now, I think both
11 sides have a lot to lose if this isn't done properly.

12 So here is what I'd propose. I'd propose
13 that the parties submit an agreed form -- and we know
14 what this is about, right, the plaintiff preservation
15 form?

16 This is a form that the plaintiffs would
17 fill out to give to the defendants with respect to what
18 the plaintiffs know about their accounts so that -- what
19 they know at this point in time about those accounts so
20 that the defendants are on notice as to -- of that
21 information so that defendants can feed that into their
22 evaluation of what their document preservation
23 responsibilities are. Okay? That's what this is about.

24 So I would suggest that I have you submit
25 either an agreed form or competing proposed forms by
26 May 26th, together with a proposal from plaintiffs as to
27 when they're going to complete the forms.

28 In other words, you know, okay, now if we

1 have agreed on a form, there should be a deadline,
2 right, for plaintiffs to individually complete these
3 forms. Okay?

4 And then if there's not an agreement, I'll
5 have a conference hopefully very quickly to resolve
6 this. If we need some briefing, I'll give you a chance
7 for briefing.

8 So when I have these conferences on a
9 particular subject, you know, if I can mediate a
10 solution, that's great. If I can't, then I'll say
11 here's how we're going to brief whatever issues we know
12 are remaining at that point.

13 Does that work for you?

14 MR. CREED: Yes, it does.

15 Just really quick, at the last hearing I
16 think Your Honor turned to us and said get them the
17 information really quickly, so we've actually turned
18 over the information requested on the form for many of
19 the --

20 THE COURT: I understand that, and I get that
21 there's -- yeah. I get that, but I think it's going to
22 be far preferable in the long run to have something
23 that says, "Here's what needs to be turned over," so
24 that can be tracked in every case.

25 MR. CREED: We will do it.

26 I think our goal though in giving the
27 information quickly is we understand that the
28 accounts -- there may be some -- they might be ephemeral

1 in some respects, so we want to make sure by giving the
2 following, we've triggered the preservation obligation,
3 whether it's on some form or separately from the forms.

4 THE COURT: I haven't made any order. Right?

5 The preservation responsibilities are what
6 they are, so -- yeah. Okay. So -- all right.

7 By May 26th, parties are to submit an
8 agreed plaintiff preservation form or competing forms
9 together with the proposal for when the plaintiffs will
10 provide completed forms.

11 So you'll file that May 26th, and for me I
12 will set June 1 as a nonappearance case review, so I'll
13 look at that on that day and see what needs to be --
14 whether there needs to be an informal conference or
15 whether I just tell you go ahead with what you've agreed
16 to. Okay?

17 MS. SIMONSEN: Thank you, Your Honor.

18 THE COURT: And if you agree to something
19 earlier, just, you know, submit it as a proposed order.

20 MR. CREED: I think we are largely in agreement.
21 We're just --

22 THE COURT: Okay. Now you've got a deadline.

23 Okay. All right. The CSAM preservation
24 order, looking at those, and those were attached to the
25 joint report, it didn't look like there was a whole lot
26 of agreement.

27 Am I reading that correctly?

28 MS. SIMONSEN: Well, Your Honor, if I may, there

1 actually is one important area of agreement since we
2 last brought this issue to Your Honor.

3 I know at the outset of these proceedings,
4 both sides raised the issue of the complication around
5 preserving CSAM which is contraband.

6 The parties having met and conferred I
7 think quite productively on this are now in agreement
8 that the defendants cannot preserve actual CSAM without
9 running afoul of federal criminal law, so we've instead
10 started to negotiate alternatives to the preservation of
11 the actual CSAM as plaintiffs had originally thought
12 might be possible.

13 So what we're now discussing is are there
14 alternative ways we can ensure the CSAM itself isn't
15 destroyed, and what plaintiffs initially proposed to us,
16 which I think makes some good sense, is that each
17 defendant represent that in the ordinary course of their
18 reporting practices to NCMEC, they actually submit the
19 CSAM itself with their NCMEC reports.

20 And defendants' understanding is that
21 NCMEC maintains the CSAM indefinitely, so it's being
22 preserved at NCMEC, and for that reason, defendants
23 believe that the concerns that animated both sides
24 raising this in the first instance and Your Honor's
25 concerns are really resolved, they're addressed.

26 Now, it is in defendants' sole discretion
27 whether to submit actual CSAM with NCMEC reports, but
28 all four defendants, to address plaintiffs' concerns and

1 Your Honor's concerns, have investigated and now have
2 made the representation to plaintiffs that they do
3 report the actual CSAM with the NCMEC reports.

4 They have, furthermore, agreed in
5 connection with meeting and conferring on this CSAM
6 preservation order that they would inform plaintiffs to
7 the extent that their NCMEC reporting practices change
8 in such a way that they longer report the actual CSAM
9 with the report.

10 And we would submit, Your Honor, that that
11 really resolves the issue because all that remains after
12 you account for the fact that the actual CSAM can't be
13 preserved by the defendants but is being preserved by
14 NCMEC is information relating to the CSAM, and the
15 parties are in the course of and have made, I think, a
16 lot of good progress negotiating a separate preservation
17 order that will cover all of the other types of
18 information that defendants are preserving in these
19 cases.

20 And that would include -- just to give
21 Your Honor an example, for Meta we have explained to
22 plaintiffs that we have account snapshots for relevant
23 accounts that we've identified and that those account
24 snapshots have certain information in them which we're
25 sharing with plaintiffs.

26 Some of that information includes
27 information relating to NCMEC reports, and therefore we
28 can negotiate in the context of that preservation order,

1 that broader preservation order, what type of
2 information defendants are preserving not only about
3 CSAM related information but all of the other
4 information that is relevant in these cases.

5 THE COURT: So for the record, could you -- and
6 for me, could you give the full name of NCMEC, is it?

7 MS. SIMONSEN: I believe it's the National Center
8 for Missing and Exploited Children.

9 THE COURT: Okay. Let me ask --

10 MR. CREED: It's a nonprofit that's been charged
11 by Congress to effectively handle these reports.

12 THE COURT: Okay. Would they make the
13 information -- I mean, these are pictures; right?

14 MS. SIMONSEN: Yes.

15 THE COURT: It could be other things I suppose,
16 but --

17 MS. SIMONSEN: When we're talking about the
18 actual CSAM, we're talking about photographs. I think
19 it could also potentially be something that's not a
20 photo -- I'm not certain about that, so I don't want to
21 represent, but it's not, for instance --

22 THE COURT: There's so many things that we don't
23 know about what reality might -- reality mirroring
24 images or other things that might come about.

25 Is there any -- and I want to hear
26 plaintiffs in a minute, but is there any understanding
27 about the willingness or ability of the National Center
28 for Missing and Exploited Children to provide that

1 information to plaintiffs, for example, at trial if the
2 Court had found that it was admissible evidence?

3 MS. SIMONSEN: I would -- I believe that the
4 plaintiffs have looked into that question.

5 My understanding from what they've
6 reported to us is that through other law enforcement
7 agencies, it may be able to be obtained, but we have not
8 ourselves investigated that question.

9 THE COURT: Okay. Let me hear from plaintiffs.

10 MR. CREED: For this issue, Your Honor, Chris
11 Ayers who is on LACourtConnect has been taking the lead,
12 so I'd defer to Mr. Ayers on the topic.

13 MR. AYERS: Good morning, your Honor.

14 This is Chris Ayers on behalf of the
15 plaintiffs.

16 So the issue -- the issue with the CSAM
17 generally is that, yes, the parties can continue to hold
18 it indefinitely and must report it.

19 Defendants have the ability to report it
20 to NCMEC which would -- which is a repository for it
21 that only works with law enforcement, so the plaintiffs
22 themselves and counsel do not have direct access to any
23 of the actual CSAM that is submitted and disclosed by
24 the defendants.

25 And so what the current dispute is really
26 about is providing -- prior to the defendants' deletion
27 of the CSAM images or video, the child pornography that
28 they possess, before they delete it, that they provide

1 notice to us and also with key information surrounding
2 the evidence that can be provided, such as what type of
3 image it was, what the contents of it were, the
4 information about the victim, information about the
5 alleged abuser, so any information surrounding this, and
6 that that information be provided to the plaintiff, and
7 also that we would get realtime notice to the actual
8 deletion of the CSAM so that we can work with law
9 enforcement to make sure that all the evidence about the
10 CSAM is preserved.

11 Because what we are talking about is,
12 while it's lawful, the destruction of the key evidence
13 that's going to be in this case, and so that's what the
14 current dispute is about.

15 We understand that defendants do submit
16 the CSAM to NCMEC, but from there, we don't have direct
17 access to it with NCMEC.

18 We've had numerous calls with NCMEC
19 personnel, and they indicated that they cannot by
20 statute provide it because they're only this nonprofit,
21 this lawful means of transitioning that to law
22 enforcement. We do not have access to it there, and
23 they cannot make it available to us there.

24 So the current dispute is about making
25 sure that we have the plaintiffs' key information
26 surrounding the actual CSAM that we have. That would be
27 evidence that would be admissible and useful in this
28 litigation.

1 THE COURT: Okay. So what do you want me to do
2 about this issue?

3 MR. AYERS: I believe the parties are going to be
4 briefing the issue, and so you'll be able to fully
5 understand the parties' positions, and you have the
6 current CSAM orders proposed now.

7 THE COURT: They have very little overlap, the
8 proposed orders --

9 MS. SIMONSEN: And, Your Honor --

10 THE COURT: -- based on my -- based on my
11 relatively quick review.

12 MS. SIMONSEN: If I may respond to points that
13 Mr. Ayers made about plaintiffs' proposed preservation
14 order?

15 What plaintiffs have proposed, having
16 recognized that defendants cannot preserve actual CSAM,
17 is that we actually have human reviewers I believe is
18 their proposal or create some kind of new AI that can
19 look at every single piece of CSAM that is being
20 reported to NCMEC and create a summary of it, which
21 would revictimize the victim of CSAM.

22 It would also run directly counter to the
23 reporting statute which expressly lays out that the
24 extent of viewing of the CSAM after it is detected and
25 reported should be extremely limited, only for purposes
26 of reporting.

27 It's also impracticable to do that.
28 Defendants' reporting systems are largely programmatic.

1 They detect CSAM through -- through machine learning
2 models -- I may be using the wrong terminology, but most
3 of it is not done through human review of actual CSAM.

4 Furthermore, it's not linked to some
5 separate set of accounts that may be determined to be
6 relevant in this litigation such that we could either
7 practicably give notice to plaintiffs when CSAM is
8 reported in connection with a user account or determine
9 whether this description of the CSAM has to be generated
10 again.

11 The only way we can see that that would be
12 done would be through some kind of human review
13 revictimizing the victim, and so for those reasons, we
14 don't think that either of those proposals --

15 THE COURT: Does federal criminal law preclude
16 human review?

17 MS. SIMONSEN: No.

18 And there are instances where these
19 defendants do human review, but what they're proposing,
20 because of the way our system is set up, it would
21 effectively require individuals to conduct a manual
22 review of every single piece of CSAM in the millions --
23 tens of millions of reports that these defendants make
24 to NCMEC every year, the vast majority of which will
25 have nothing to do with this litigation, and it's not a
26 part of what's required by federal law.

27 In fact, we would submit to Your Honor,
28 again, that it runs counter to federal law.

1 THE COURT: This is litigation.

2 MS. SIMONSEN: Understood, Your Honor, but -- we
3 are happy to brief this.

4 There is no litigation exception in the
5 NCMEC reporting statute despite there being exceptions
6 for other circumstances.

7 THE COURT: I understand.

8 You have to come to grips with the
9 question of whether you want in a trial the plaintiffs
10 to be able to stand up and tell the jury that through
11 computer means, you destroyed the information that could
12 show what they need to prove their case.

13 And I could read you -- I don't have it up
14 here anymore, but the jury instruction on that is
15 incredibly powerful about destroyed information, whether
16 it's intentional or not.

17 We need to grapple with this issue in my
18 opinion in order to protect both sides.

19 MS. SIMONSEN: Understood, Your Honor.

20 I think plaintiffs recognize that we can't
21 preserve the CSAM, so I don't think that's evenly an
22 issue of dispute anymore. We have to destroy the CSAM
23 after we've reported it. It is then preserved by NCMEC.

24 I would submit, Your Honor, I don't even
25 know how plaintiffs could ever admit this in evidence
26 because it is contraband. It can't be possessed. It
27 can't be shown again to an entire jury, which would
28 revictimize --

1 THE COURT: Have you been to the criminal courts
2 building?

3 MS. SIMONSEN: Well, in the context of criminal
4 proceedings, there's an exception, and that is the
5 exception that I mentioned to Your Honor in the NCMEC
6 reporting statute for criminal proceedings.

7 These are not criminal proceedings.

8 There's no exception.

9 THE COURT: So they shouldn't be able to prove
10 their case if they have a plaintiff who was victimized
11 by being asked to provide pictures of their private
12 parts to somebody else? They shouldn't be able to prove
13 their case?

14 MS. SIMONSEN: I'm not suggesting that they
15 shouldn't be able to prove their case, Your Honor, but
16 in this instance there are certain limitations on
17 evidence that can be used to do that.

18 In this case, of course, to the extent
19 that there is CSAM in any of these individual user's
20 accounts, that is something that they could certainly
21 describe if they were the ones who were the victims, as
22 opposed to having, for instance, individuals -- that
23 each of the defendants review tens of millions of pieces
24 of CSAM revictimizing all of those victims in order to
25 summarize it in a way that, again, I'm sure there would
26 then be disputes about whether we adequately summarized
27 it.

28 In the meantime, we do have these NCMEC

1 reports which, for instance, you know, I think I
2 would -- we would want to submit this information with
3 our briefing to the extent that it is highly
4 confidential information --

5 THE COURT: But the reports can't be linked to
6 any individual plaintiff.

7 MS. SIMONSEN: Oh, they can because -- and that's
8 what we can submit more information to Your Honor about,
9 and this is what I was getting to with this idea of the
10 broader preservation order covering -- this is
11 information about these NCMEC reports and the CSAM that
12 the defendants do maintain and do preserve beyond the
13 actual CSAM itself, and we're in the process of
14 discussing with plaintiffs exactly what that information
15 is.

16 And so it would include, you know,
17 information I believe about the victim and the
18 perpetrator. I mean, I would want to confirm that, and
19 we'd want to submit that to Your Honor.

20 But in addition, there is a way that each
21 defendant is able to confirm -- if we have, for
22 instance, say a list of relevant accounts in this
23 litigation, plaintiff accounts, there's a way to confirm
24 whether for any particular account there was a NCMEC
25 report that was made in connection with CSAM that may
26 have been associated with that account.

27 THE COURT: So you can associate with them with
28 an individual?

1 MS. SIMONSEN: We can associate NCMEC reports
2 with an individual, that's right, Your Honor.

3 And so, you know --

4 THE COURT: Even though this AI machine is doing
5 it, you can associate it with the report?

6 MS. SIMONSEN: Oh, absolutely.

7 What we can't do, Your Honor, is -- and
8 don't do and we believe would violate the statute is
9 have an individual human look at the CSAM and summarize
10 it and describe it before it gets reported to NCMEC,
11 which is what plaintiff is proposing that we do.

12 And if --

13 THE COURT: All right. Mr. Ayers?

14 MR. AYERS: Yes.

15 What defendants are talking about isn't
16 actually what the plaintiffs' proposal contemplates.

17 What the plaintiffs' proposal contemplates
18 is to make sure, because of CSAM in certain context
19 would have to be deleted following its reporting to law
20 enforcement or NCMEC, ask them to preserve it past the
21 90 days.

22 We ask that they make sure that they
23 preserve prior to deletion and also provide to the
24 plaintiffs key information, and those are spelled out,
25 and they also -- those are spelled out not only just
26 talking about the suspected CSAM itself but talking
27 about the source of CSAM, suspected offender and victim,
28 and other identifying information and other additional

1 information.

2 CSAM is admissible in court, and what
3 happens in the context of using it in court, both civil
4 and criminal, is that the CSAM images would need to be
5 redacted, and those would be court personnel.

6 And so if we're talking about admitting,
7 the Court would need to take acceptance of CSAM images
8 from law enforcement and then conduct its own redaction
9 of that for its admissibility.

10 It's obviously a heavy burden on the court
11 providing such descriptions of the CSAM itself. It may
12 alleviate some of those burdens and also have information
13 related to the suspected CSAM that plaintiffs would have
14 and not have to use law enforcement resources in order
15 to potentially try to get -- get access to the CSAM from
16 NCMEC.

17 There are resources for that. Nothing
18 about providing a description of the CSAM images
19 themselves would violate anything within the federal
20 rules, federal law whatsoever, so that's just not
21 accurate.

22 There are potential ways to provide
23 descriptive features of these videos. Part of the
24 description we ask for is including whether it's a video
25 or image, the number of files, any distinctive features
26 of the material included in any of their available
27 metadata. So there are ways to go about this and do it
28 to make sure that this information is preserved about

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1 | the CSAM.

2 The preservation order itself that we're
3 discussing does not tackle this issue directly. What
4 we're talking about is contraband that the defendants
5 will not be preserving, will be deleted, and so in the
6 context of the deletion of evidence, we want to make
7 sure as plaintiffs that we're able to get all the
8 details around that deleted.

9 Just as if there was an inadvertent
10 spoliation issue, they would -- defendants would be
11 required to describe what evidence was actually -- what
12 evidence was destroyed, what evidence was lost so that
13 plaintiffs would have those disclosures.

14 It's commonplace in litigation where
15 evidence is lost or destroyed, whether lawfully or
16 otherwise, to provide a description of that information.

17 And what plaintiffs provided in their
18 order -- in their proposed order is a statutory history,
19 a little background to explain how the federal law works
20 in connection with the reporting of CSAM as well as the
21 preservation of it.

22 And so we believe that the reporting to
23 NCMEC is a way for the defendants to make sure that this
24 information is preserved.

25 That said, if there's another means that
26 defendants would prefer to provide plaintiffs with this
27 valuable information about the CSAM, we can further
28 discuss it, but, nonetheless, the plaintiffs have a

1 right to this information about it to make sure we
2 understand information about the victim itself, about
3 the abuser, and about the CSAM.

4 MS. SIMONSEN: Your Honor, with the exception of
5 the description of the CSAM, which I don't really know
6 what Mr. Ayers means by that, I think we can continue to
7 meet and confer as we have been to share with him
8 information about the CSAM that we do preserve, which
9 some of those items he just mentioned we do preserve,
10 and we told him that, and we told him that we'll commit
11 in the preservation order that we're negotiating to
12 preserve that information in connection with our other
13 preservation efforts.

14 If Your Honor would prefer, we can go
15 ahead and put that into a preservation order that would
16 be entered separately for purposes of CSAM, but I think
17 further conferral on the description of the CSAM is
18 probably going to be the nub of the issue.

19 I'll also note, Your Honor, that if
20 Mr. Ayers is aware of a way in civil proceedings through
21 law enforcement to admit CSAM, then it's unclear to me
22 why he wouldn't pursue that route to the extent that
23 plaintiffs want to introduce this in evidence at trial.

24 I'm not aware that that's permissible, but
25 to me that seems to be the solution rather than having
26 defendants create summaries of CSAM, which as I've
27 described is impracticable.

28 But I do think, Your Honor, additional

1 briefing on this may be the most helpful for Your Honor,
2 and the parties have proposed submitting something by
3 May 26th for Your Honor's consideration if that would be
4 acceptable.

5 THE COURT: So that's fine.

6 I think it probably -- so let me ask
7 Mr. Ayers.

8 You want to continued to see how close you
9 can get on this? That would be helpful.

10 MR. AYERS: I think if the parties -- the parties
11 can continue to meet and confer to see if we can come to
12 a closer agreement.

13 I will say just quickly in response, you
14 know, CSAM -- while CSAM has been admitted and is
15 admissible, there's significant burdens to it, as well
16 as the access to the CSAM images by plaintiffs counsel,
17 as well as the victims themselves.

18 Since NCMEC can't -- we can't get access
19 through NCMEC itself, the defendants' proposal
20 essentially is to say, "Hey, we're providing the CSAM to
21 NCMEC which you can't get from NCMEC anyway, and this
22 isn't admissible in court so tough."

23 And so we are looking for a mechanism to
24 be able to provide that, use the information about that
25 CSAM so that it would be usable and useful as evidence
26 to the Court, as well as to plaintiff.

27 So we're happy to continue to meet and
28 confer to see if we can find some more common ground.

1 THE COURT: Okay. That sounds fine.

2 So maybe what we should though -- I think
3 you were proposing simultaneous briefing on what you
4 were unable to agree with.

5 I think it's probably better for
6 plaintiffs to bring a motion because if I'm ordering
7 defendants to do something that is arguably contrary to
8 federal law in order to meet the requirements of civil
9 litigation, then it better be based on a noticed motion.

10 Okay?

11 So let's do it this way. Get as close as
12 you can, and then, Mr. Ayers, go ahead and file your
13 motion by May -- by May 26th, and go ahead and submit a
14 briefing schedule just on Case Anywhere, okay, or you
15 could do, you know -- you could do it as a stip and
16 proposed order.

17 Do it on Case Anywhere, and let me know
18 and then request a hearing date that way. Okay?

19 Give me your briefing schedule and a
20 hearing date. Okay?

21 All right. So that bring up filing
22 proposed orders with the court.

23 So you had a proposed order regarding
24 waiver of formal service, which is fine, but, you know,
25 it's whatever Attachment 10 is to the joint report.

26 So we don't want the staff to have to take
27 the joint report apart and get that out and then have to
28 file it. So when you -- the way our electronic system

1 works is if it has the word "proposed order" in it or
2 "stip and proposed order," it gets into the work queue,
3 basically.

4 So file that as a -- as a proposed order
5 or as a stipulation and proposed order letting me know
6 that it's agreed to by the parties, and then that is
7 easier to execute that way.

8 Did my staff have anything else, since
9 we're talking about proposed orders, that you wanted to
10 let counsel know about in terms of getting orders to us?

11 THE CLERK: I think that's the most important
12 part, was that anything mentioned in a report and if
13 it's proposed, it needs to come into the work digitally
14 standing on its own so we can process it.

15 THE COURT: Okay. Good.

16 If you have questions, my staff is
17 wonderful. You can call them, but don't abuse the
18 privilege. Okay?

19 All right. Call and benefit order,
20 turning to the plaintiffs, so I talked last time about
21 the possibility of a consensual agreement among counsel.

22 Have you tried that and failed?

23 MS. JEFFCOTT: The problem we have with that is
24 there's already an order entered in the MDL that would
25 essentially hold back 10 percent of most, if not all, of
the cases that are already filed in the JCCP and that
will be filed in the future most likely.

28 And so in order to essentially prevent a

1 double holdback that we would be able to achieve, if we
2 did a private agreement, we would need something more
3 formal along the lines of we believe a parallel common
4 benefit order filed in the litigation that would
5 explicitly say that there isn't going to be a double
6 holdback, that there wouldn't be a 10-percent holdback
7 on cases that are subject to an MDL assessment, and also
8 that would explain that there would be coordination
9 between the MDL and the JCCP, and that there could be no
10 duplicative work, and all of the elements of that we're
11 trying to seek through coordination that's already
12 ongoing in the litigation.

13 THE COURT: Can't you do that yourselves though?

14 Because you can agree to something --
15 well, my position is that that ought to be the case for
16 both federal and state court, but I don't have anything
17 to do about federal court.

18 Why can't you take all of those things
19 you've just said and agreed to them among yourselves,
20 and then, you know, I can ask that you submit it to
21 Judge Gonzalez Rogers and see if there is anything she
22 believes in your agreement that would conflict with her
23 orders?

24 MS. JEFFCOTT: We can certainly try that.

25 I think one concern we have is that as
26 additional cases get filed into the JCCP, that we would
27 have to essentially renegotiate or have those new -- new
28 parties, new counsel entered into the agreement.

1 THE COURT: You'd have a provision for new
2 counsel being added, and if you've got a free rider in
3 the future, there are a lot of reasons why somebody
4 coming in would not be a free rider, quite honestly, but
5 maybe there would be a free rider. You could bring it
6 to the court.

7 MS. JEFFCOTT: Your Honor, we'll work to --

8 THE COURT: Why don't you try to do that?

9 Let me -- sorry.

10 I know this may seem like wasted effort,
11 why can't I just sign a piece of paper, but ultimately
12 if I don't have authority to, I can't enforce it anyway,
13 so -- whereas if you do it by agreement, you know, it's
14 a contractual arrangement.

15 And so if you're not able to achieve that,
16 you can come back and file a motion.

17 MS. JEFFCOTT: One question, Your Honor.

18 If we're able to achieve an agreement,
19 will we be able to submit that as sort of a stipulation
20 so that at least we've made a record of it?

21 THE COURT: Yes. You'll be able to make a record
22 of it.

23 MS. JEFFCOTT: Thank you, Your Honor.

24 THE COURT: Yes. Definitely.

25 So if you can't achieve that, you can
26 bring a motion.

27 I will want to know which counsel are not
28 in agreement with going along with everyone else's

1 proposal, so to speak, and -- but then you'll have to
2 brief the authority.

3 There are articles by Professor Charles
4 Silver of the University of Texas, and I think he just
5 posted one. I found it online on unjust enrichment
6 theory. I think he's already written that there's no
7 authority for common benefit fund theory, and maybe he's
8 out there by himself on it.

9 I'm aware of the whole history of the
10 complex litigation handbook on the federal side and that
11 everyone does it, but there is that -- there are those
12 arguments that Professor Silver makes, and moreover, and
13 most importantly here, we'd have to address it under
14 California law. We have to find a way under California
15 law.

16 So -- and I just-- I'm not going to preach
17 on it. I want to be helpful to all parties here, but
18 for reasons I mentioned last time, it feels very uneven
19 to me to be issuing orders to make sure that counsel on
20 one side can get paid.

21 It just doesn't feel right, understanding
22 however, that when you have multiple counsel, you've got
23 to find some way of being fair to the people who are
24 taking the laboring oar, who are the people sitting
25 here.

26 MS. JEFFCOTT: I think what we're trying to
27 establish is a mechanism so that we can raise funds to
28 pursue the litigation and also at the back end make sure

1 that people are compensated for their expenses and time.

2 We appreciate the guidance you've
3 provided. We'll work through this and report back if
4 necessary.

5 THE COURT: Yeah, let me know.

6 I'm not totally foreclosing, but -- well,
7 I've said what I've said, but try to work it out
8 yourselves, and you may be establishing some new, you
9 know, mechanisms for going forward.

10 As I'm sure everybody here knows, the
11 Federal Rules Committee is considering -- the Civil
12 Rules Committee sent to the Standing Committee rules
13 about the MDL -- proposed rules by the MDL, and it does
14 make mention of the common benefit fund there.

15 So if that's -- if those are approved,
16 which works -- the rules committees work very slowly.

17 If that's approved, then people will point
18 to that and say that's the authority for it, and maybe
19 it is. We'll see what they do.

20 Okay. I am happy to add Mr. Kamamoto
21 (phonetic) to the plaintiffs' steering committee, so if
22 you'll just file a proposed order on that in that
23 regard?

24 MS. JEFFCOTT: Yes, Your Honor.

25 THE COURT: Stip and proposed order.

26 With respect to the cases that you
27 helpfully listed in the joint report, plus the one case
28 that was mentioned in the Case Anywhere posting as one

1 you've recently agreed should be included in the JCCP,
2 I've consulted with my clerk, and we think it's better
3 that the clerk's minute order today just add those cases
4 on.

5 And apparently there's a new code that
6 will help the clerk get that organized in the court
7 system, so let us try that, and then you don't have to
8 submit a separate proposed order. Okay?

9 MS. JEFFCOTT: Thank you, Your Honor.

10 THE COURT: Good.

11 Then the final thing. This is not
12 mentioned in the joint report, but I'm adding it on.

13 So I had requested a proposed order
14 allowing plaintiffs to be named by their pseudonyms. I
15 did not enter what was given to me, and I really wanted
16 some more on that.

17 So the things that I need are, I think it
18 should be limited to plaintiffs who are minors or
19 plaintiffs who are not minors but who are alleging
20 sexual abuse because I think those are pretty much
21 automatic categories for listing people by pseudonyms.

22 And if you accept that limitation, then I
23 think you can say that there is good cause, and if you
24 didn't mind looking for a case about the issue of -- the
25 minors I think is very clear, and the whole dependency
26 system operates that way, but the issue about adults and
27 sexual abuse, there's probably a case on that. If you
28 can cite it, it would be great.

1 MS. JEFFCOTT: Thank you, Your Honor.

2 THE COURT: So resubmit that when you can.

3 So I'll set a next status conference, but
4 before I do that, is there anything else?

5 MS. SIMONSEN: Your Honor, defendants just wanted
6 to clarify.

7 I believe the plaintiffs had reported that
8 there are 124 cases in the JCCP. We wanted you to be
9 aware that that is actually a count by plaintiffs of the
10 number of plaintiffs. By our count, there are actually
11 61 cases in the JCCP.

12 Plaintiffs have begun filing
13 multi-plaintiff complaints, and that is the reason why
14 there is half the number of cases as there are
15 plaintiffs.

16 THE COURT: Thank you. I appreciate that
17 clarification.

18 Sixty-one cases, yeah, and that becomes
19 what we live with in state court because we don't
20 require them to be filed separately, although, trust me,
21 the recordkeeping is much simpler if you can do them
22 separately.

23 MS. SIMONSEN: And as we've stated in the waiver
24 of service agreement, the defendants of course would
25 reserve the right to take the position down the road, to
26 the extent there are trials, that those should be
27 individual trials and not --

28 THE COURT: Absolutely. Absolutely.

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1 Let me ask plaintiffs.

2 It would be helpful if you would not mix
3 plaintiffs from different states in one complaint. I'm
4 not ordering you in that regard, but that would be
5 helpful.

6 MS. JEFFCOTT: Okay. Your Honor, I'll pass that
7 along.

8 THE COURT: Okay. Thank you.

9 | Anything else?

10 MS. CLEOFE: Your Honor, Cherisse Cleofe on
11 behalf of plaintiffs.

12 Just a point of clarification for the
13 proposed order regarding formal service.

14 Did you need the parties to resubmit that
15 proposed order, or is the proposed order from the joint
16 report acceptable?

17 THE COURT: I need you to resubmit it.

18 MS. CLEOFE: Understood, Your Honor.

19 THE COURT: So we're not taking courtesy copies
20 apart or printing out parts of Case Anywhere things and
21 separating them.

22 Anything you want entered as an order
23 should always be filed as a separate document or lodged
24 as a separate document.

25 MS. CLEOFE: Understood, Your Honor. We'll
26 resubmit that and the other one.

27 | THE COURT: Okay. Appreciate that.

28 | Okay. Thank you. Very good work on

1 everybody, and I know you had disagreements, but I think
2 it will get easier as we go along. Maybe it won't,
3 but --

4 MR. ORENT: Your Honor, this is Jonathan Orent
5 for plaintiffs.

6 We have one housekeeping that's come up,
7 and I suspect others may have the same issue, and I
8 wanted to raise it before the Court, which is we filed a
9 stipulation of dismissal along with defendants in a
10 particular case. This case is 22-CIV-03783.

11 The case was being refiled in the MDL, and
12 the stipulation of dismissal was rejected by the court
13 stating that we needed to prove essentially it was a
14 settlement and that the settlement met the needs of the
15 minor child, and I just wanted to raise this issue
16 because this was an instance where we were immediately
17 refiling in the MDL and wanted to really flag it for the
18 Court and understand how the Court wanted those types of
19 issues handled.

20 THE COURT: Minor's compromises will at some
21 point, if these cases are resolved, consensually be a
22 big issue, no question about it, but I take your point
23 that this is just being refiled.

24 Ms. Miro, can you shed any light on this?

25 THE COURTROOM ASSISTANT: Yeah, it actually came
26 through as a request for dismissal, and I explained to
27 them that we couldn't dismiss a minor.

28 THE COURT: Okay. So here's what I'd like you to

1 do.

2 I would -- and my staff is correct about
3 that, but I take your point that you're refiling in
4 federal court, and I think there is a difference.

5 So why don't you file a document called
6 Request for Dismissal and Proposed Order, okay, and
7 explain the circumstances, and that way I can sign it.

8 I can approve the deviation from the --
9 what would be the ordinary rule if -- but I'll probably
10 need a declaration stating it's going to be refiled.

11 Does that make sense?

12 MR. ORENT: Absolutely, Your Honor. Thank you
13 for the clarification.

14 THE COURT: Sorry for the extra work, but we're
15 serious about our minors' compromises. Okay?

16 Anything else?

17 All right. We can set a further status
18 conference. Do you have any suggestions?

19 And thank you, by the way, for being --
20 going along with us and moving this one.

21 I had planned I was going to be in trial.
22 My case settled, but I was going to do this and then
23 proceed into my trial, which is why I moved it to the
24 morning, but the trial is on its way for now.

25 Any suggestions on how long we should wait
26 before the next -- is there anything in federal court we
27 should link it to?

28 MS. SIMONSEN: Your Honor, I think at least from

1 the defense side, and I welcome other defendants' views,
2 that given these upcoming briefing that we'll be doing
3 on various issues, I think that would probably serve to
4 address the most immediate issues that we're currently
5 working through.

6 I think that probably setting a status
7 conference -- we may not need another one until
8 potentially after the demurrers are resolved or maybe we
9 come back to the court --

10 THE COURT: No. You're going to have more before
11 the demurrers are resolved. I'm going to make sure
12 these things are moving forward, and we have the August
13 filing dates and all these things.

14 But if -- Plaintiffs?

15 MS. JEFFCOTT: Your Honor, I think not
16 surprisingly we find these conferences very helpful.
17 They keep us moving forward and at a pace I think that
18 is particularly beneficial to plaintiffs.

19 And so, you know, a month, six weeks,
20 that's something we would envision as being the next
21 conference so that we can keep trucking along.

22 THE COURT: Okay. Let me just look at my notes a
23 minute.

24 We may be able to -- we would set it maybe
25 at the same time as we're having a hearing on the CSAM
26 preservation order. Right?

27 MS. SIMONSEN: That makes good sense, Your Honor.

28 THE COURT: But we don't know when that's going

1 to be or indeed if we need it, so here's what I'll do.

2 I'll set for -- let's see. Did I already
3 set a June 1 appearance I think? Is that the date I set
4 the nonappearance?

5 THE CLERK: Yes.

6 THE COURT: So June 1, that nonappearance case
7 will also be re setting further status conference.

8 Okay?

9 So I'll set it consistent with the hearing
10 date on the CSAM motion, and then if there's some other
11 motion that has to come up in that time with that.

12 MS. SIMONSEN: Thank you, Your Honor.

13 THE COURT: So that would be the next date.

14 Plaintiffs' liaison counsel will give
15 notice. We will get out a minute order that you can
16 use.

17 MS. CLEOFE: Thank you, Your Honor.

18 THE COURT: Anything?

19 MS. SIMONSEN: Nothing from the defense.

20 THE COURT: Very good. Thank you very much.

21

22 (The proceedings were concluded.)

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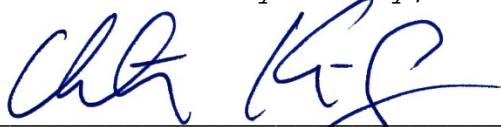
1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT SSC 12 HON. CAROLYN B. KUHL, JUDGE

4 SOCIAL MEDIA CASES,)
5) CASE NO. JCCP5255
6)
7) REPORTER'S
8) CERTIFICATE

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I, Christine Kwon-Chang, official pro
tempore court reporter of the Superior Court of the
State of California, for the County of Los Angeles, do
hereby certify that I did correctly report the
proceedings contained herein and that the foregoing
pages comprise a full, true and correct transcript of
the proceedings taken in the matter of the
above-entitled cause on May 3, 2023.

Dated this 4th day of May, 2023.


Christine Kwon-Chang, CSR No. 12143, CRR
Official Pro Tempore Reporter

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